

REMARKS

The Office has provided a communication indicating that the previously filed amendment was non-responsive because it canceled all claims drawn to the elected invention and provided only new claims drawn to a non-elected invention. However, according to M.P.E.P. Section 818.01, an election only becomes fixed once an action on the merits has issued. Further, in accordance with M.P.E.P. Section 818.02, where claims to another invention are properly added and entered in the application before an action is given, they are treated as original claims for the purposes of restriction. Consistent with these M.P.E.P. sections, the Examiner clarified to the Applicant in a telephone conversation that an appropriate response to this Notice of Non-Compliant Amendment would simply be a confirmation that the Applicant intended to amend the claims to cancel the pending claims and add the new claims, and further confirm that the previous election was therefore no longer applicable. Applicant now confirms that it wishes to proceed with the newly added claims, and that the prior election is no longer applicable.

Applicant further requests a one-month extension-of-time, and requests that the fee for the one-month extension-of-time, and any other charges or credits be charged to deposit account 06-1050.

Respectfully submitted,

September 1, 2009  
Date: \_\_\_\_\_

/Edna Vassilovski/

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